

REQUEST: NON-COMPETITIVE AMENDMENT

APPROVED

Commissioner of Finance & Administration

Date:

Each of the request items below indicates specific information that must be individually detailed or addressed as required.
A REQUEST CAN NOT BE CONSIDERED IF INFORMATION PROVIDED IS INCOMPLETE, NON-RESPONSIVE, OR DOES NOT
CLEARLY ADDRESS EACH OF THE REQUIREMENTS INDIVIDUALLY AS REQUIRED.

RFS #	318.65-124		
STATE AGENCY NAME :	Department of Finance and Administration Bureau of TennCare		
SERVICE CAPTION :	Provide Medical TenCare Enrollee Information/Appeals		
CONTRACT #	FA-03-15070-00	PROPOSED AMENDMENT #	2
CONTRACTOR :	Schaller Anderson, Inc.		
CONTRACT START DATE :	September 15, 2002		
CURRENT, LATEST POSSIBLE END DATE : (including ALL options to extend)	September 14, 2007		
CURRENT MAXIMUM LIABILITY :	\$37,831,184.00		
LATEST POSSIBLE END DATE WITH PROPOSED AMENDMENT : (including ALL options to extend)	September 14, 2007		
TOTAL MAXIMUM COST WITH PROPOSED AMENDMENT : (including ALL options to extend)	\$38,618,318.00		
APPROVAL CRITERIA : (select one)	<input checked="" type="checkbox"/> use of Non-Competitive Negotiation is in the best interest of the state <input type="checkbox"/> only one uniquely qualified service provider able to provide the service		
ADDITIONAL REQUIRED REQUEST DETAILS BELOW (address each item immediately following the requirement text)			
(1) description of the proposed additional service and amendment effects :			
The Contractor shall devise a pharmacy management program to encompass review and management of the existing Pharmacy Contract, deployment of cost savings initiatives related to the existing Pharmacy Contract as well as assisting in contracting a long-term pharmacy partner upon termination of the existing Pharmacy contract.			
(2) explanation of need for the proposed amendment :			

In an effort to deploy cost savings initiatives, this contractor has agreed to assist the state in reviewing and managing the current Pharmacy Contract, including designing contract language necessary to implement the therapeutic substitution process in FY '05.

(3) **name and address of the proposed contractor's principal owner(s) :**
(not required if proposed contractor is a state education institution)

Schaller Anderson, Inc.
4645 East Cotton Center Blvd., Bldg. 1, Suite 200
Phoenix, AZ 85040

(4) **documentation of OIR endorsement of the Non-Competitive procurement request :**
(required only if the subject service involves information technology)

select one:



Documentation Not Applicable to this Request



Documentation Attached to this Request

(5) **documentation of Department of Personnel endorsement of the Non-Competitive procurement request :**
(required only if the subject service involves training for state employees)

select one:



Documentation Not Applicable to this Request



Documentation Attached to this Request

(6) **description of procuring agency efforts to identify reasonable, competitive, procurement alternatives rather than to use non-competitive negotiation :**

This contract was competitively bid and awarded to Schaller Anderson, Inc. This amendment would allow a contractor already in place to address the current needs presented by the Pharmacy contract. Schaller Andersons knowledge and experience with TennCare make them an excellent choice to assist TennCare in devising a pharmacy management program.

(7) **justification of why the F&A Commissioner should approve a Non-Competitive Amendment :**

This Contractor is already in place providing the TennCare enrollee information functions as they pertain to medical appeals. The Bureau of TennCare, together with the Contractor, has identified these additional needed functions as they relate to the needs of the Pharmacy management program that can easily be incorporated into the Contractor's current scope of services. The Bureau of TennCare would appreciate favorable consideration of this amendment.

AGENCY HEAD REQUEST SIGNATURE:

(must be signed by the ACTUAL procuring agency head as detailed on the Signature Certification on file with OCR — signature by an authorized signatory will be accepted only in documented exigent circumstances)

SIGNATURE DATE

1-10-05

**AMENDMENT #2
TO CONTRACT FA-03-15070-00
BETWEEN THE STATE OF TENNESSEE,
DEPARTMENT OF FINANCE AND ADMINISTRATION
BUREAU OF TENNCARE
AND
SCHALLER ANDERSON OF TENNESSEE, L.L.C.**

This Contract, by and between the State of Tennessee, Department of Finance and Administration, hereinafter referred to as the "State" or "TennCare," and Schaller Anderson of Tennessee, L.L.C., hereinafter referred to as the "Contractor," is for the provision of TennCare enrollee information as pertains to medical appeals, is hereby amended as follows:

1. Add the following to Section A, Scope of Service, the following language:

A.4.6. The Contractor shall operate a pharmacy oversight program to be effective January 1, 2005 through December 31, 2005, unless prior written notification is provided by the State to the Contractor in accordance with this section. The State shall give the Contractor at least sixty (60) days written notice before the effective termination date of services related to this section. The Contractor shall be entitled to receive compensation for this Section as identified in section C.3.1 for satisfactory, authorized service completed as of the termination date, but in no event shall the State be liable to the Contractor for compensation for any service related to this Section which has not been rendered. The pharmacy oversight shall encompass three services: review and oversight of the existing Pharmacy Benefits Manager (PBM), assist the State and the PBM in its deployment of cost savings initiatives related to the existing PBM, and assist in identifying a long-term pharmacy partner upon termination of the existing PBM.

- a. Review and oversight of the current PBM contract will include:
 - (1) Managing the *list of PBM failures* to meet contract terms as previously defined by the State
 - (2) Developing systematic approach for the State to address the identified failures
 - (3) Assisting the State in determining necessity and appropriateness of liquidated damages under the PMBs current contract
 - (4) Developing, tracking and monitoring procedures to verify PBMs fulfillment of its obligations under the current contract
- b. Assistance in the Deployment of cost savings initiatives involves:
 - (1) If necessary, preparing and assisting the State in negotiating an addendum to the existing PBM contract
 - (2) Assisting the State in identifying measurements for possible non-therapeutic substitution initiatives
 - (3) Assisting in the development of programs to promote successful implementation of initiatives to meet the State's defined cost savings targets
- c. If requested by the State, provide consultation in identifying a long-term pharmacy partner by performing the following activities:
 - (1) Developing a pharmacy RFI and performing necessary research and data analysis
 - (2) Assist the State in identifying prospective bidders to receive the RFI and assisting the State in its evaluation of the responses to the RFI
 - (3) Assessing the prior pharmacy RFP to analyze why prior response was limited
 - (4) Assist the State in designing a pharmacy RFP based on the RFI results
 - (5) Provide consultation to the State in its RFP process to acquire a long-term pharmacy partner
 - (6) Proposing terms for possible contract amendments to the current PBM contract necessary to implement the therapeutic substitution process in CY05

2. Delete Section C.1 in its entirety and replace with the following:

C.1. **Maximum Liability.** In no event shall the maximum liability of the State under this Contract exceed Thirty-Eight Million, Six Hundred Eighteen Thousand, Three Hundred Eighteen Dollars (\$38,618,318.00). The Payment Rates in Section C.3 shall constitute the entire compensation due the Contractor for the Service and all of the Contractor's obligations hereunder regardless of the difficulty, materials or equipment required. The Payment Rates include, but are not limited to, all applicable taxes, fees, overheads, profit, and all other direct and indirect costs incurred or to be incurred by the Contractor.

The Contractor is not entitled to be paid the maximum liability for any period under the Contract or any extensions of the Contract for work not requested by the State. The maximum liability represents available funds for payment to the Contractor and does not guarantee payment of any such funds to the Contractor under this Contract unless the State requests work and the Contractor performs said work, in which case, the Contractor shall be paid in accordance with Payment Rates detailed in Section C.3. The State is under no obligation to request work from the Contractor in any specific dollar amounts or to request any work at all from the Contractor during any period of this Contract.

3. Add the following at the end of C.3.1, Monthly Payment for Services:

Effective January 1, 2005, the following rates shall apply:

<u>Services</u>	<u>Completed Medical Necessity Reviews Per Month</u>	<u>Payment Rate Per Month 9/15/02</u>	<u>Payment Rate Per Month 9/15/03</u>	<u>Payment Rate Per Month 9/15/04</u>	<u>Payment Rate Per Month 9/15/05</u>	<u>Payment Rate Per Month 9/15/06</u>
		<u>9/14/03</u>	<u>9/14/04</u>	<u>9/14/05</u>	<u>9/14/06</u>	<u>9/14/07</u>
Operations	N/A	\$485,647	\$512,912	\$533,148	\$554,813	\$580,212
Pharmacy Oversight (01/01/05 – 12/31/05 Section A.4.6))	N/A	NA	NA	\$83,484*	\$47,705**	NA
Medical Necessity Reviews for Appeals	0-50	\$9,500	\$9,900	\$10,300	\$10,700	\$11,100
Medical Necessity Reviews for Appeals	51-100	\$19,000	\$19,800	\$20,600	\$21,400	\$22,200
Medical Necessity Reviews for Appeals	101-150	\$27,000	\$28,050	\$29,250	\$30,300	\$31,650
Medical Necessity Reviews for Appeals	Over 150	\$34,000	\$35,400	\$36,800	\$38,200	\$39,800

* January 1 – June 30 Rate

** July 1 – December 31 Rate

4. Delete E. 26 and E. 27 in their entirety and replace with the following:

E.26. **HIPAA Compliance.** The State and Contractor shall comply with obligations under the Health Insurance Portability and Accountability Act of 1996 (HIPAA) and its accompanying regulations.

- Contractor warrants to the State that it is familiar with the requirements of HIPAA and its accompanying regulations, and will comply with all applicable HIPAA requirements in the course of this contract.
- Contractor warrants that it will cooperate with the State, including cooperation and coordination with State privacy officials and other compliance officers required by HIPAA and its regulations, in the course of performance of the Contract so that both parties will be in compliance with HIPAA.
- The State and the Contractor will sign documents, including but not limited to business associate agreements, as required by HIPAA and that are reasonably necessary to keep the State and

Contractor in compliance with HIPAA. This provision shall not apply if information received by the State under this Contract is NOT "protected health information" as defined by HIPAA, or if HIPAA permits the State to receive such information without entering into a business associate agreement or signing another such document.

E.27. MFCU Access to Contractor and Provider Records
Office of TennCare Inspector General Access to Contractor, Provider, and Enrollee Records

Pursuant to Executive Order 47 and 42 CFR §1007, The Medicaid Fraud Control Unit (MFCU) is the State agency responsible for the investigation of provider fraud, abuse and neglect in the State Medicaid program (TennCare). The Office of TennCare Inspector General (TennCare OIG) is responsible for assisting MFCU with provider cases and has the primary responsibility of investigating TennCare enrollee fraud and abuse.

Pursuant to the Health Insurance Portability and Accountability Act (HIPAA) privacy regulations, MFCU and TennCare OIG shall be health oversight agencies as defined at 45 C.F.R. §§ 164.501 and 164.512(d) and 65 F.R. § 82462. When acting in their respective capacities as health oversight agencies, MFCU and TennCare OIG do not need authorization to obtain enrollee protected health information (PHI). Because MFCU and TennCare OIG will request the information mentioned above for health oversight activities, "minimum necessary" standards do not apply to disclosures to MFCU or TennCare OIG that are required by law. See 45 C.F.R. §§ 164.502(b)(2)(iv), 164.502(b)(2)(v), and 164.512(d).

The Contractor shall immediately report to MFCU all factually based known or suspected fraud, abuse, waste and/or neglect of a provider or Contractor, including, but not limited to, the false or fraudulent filings of claims and/or the acceptance or failure to return money allowed or paid on claims known to be false or fraudulent. The Contractor shall not investigate or resolve the suspicion, knowledge or action without informing MFCU, and must cooperate fully in any investigation by MFCU or subsequent legal action that may result from such an investigation.

The Contractor and all its health care providers who have access to any administrative, financial, and/or medical records which relate to the delivery of items or services for which TennCare monies are expended, shall, upon request, make them available to MFCU or TennCare OIG. In addition, the MFCU must be allowed access to the place of business and to all TennCare records of any Contractor or health care provider, during normal business hours, except under special circumstances when after hour admission shall be allowed. MFCU shall determine any and all special circumstances.

The Contractor and its participating and non-participating providers shall report TennCare enrollee fraud and abuse to TennCare OIG. The Contractor and/or provider may be asked to help and assist in investigations by providing requested information and access to records. Shall the need arise, TennCare OIG must be allowed access to the place of business and to all TennCare records of any TennCare Contractor or health care provider, whether participating or non-participating, during normal business hours.

The Contractor shall inform its participating and non-participating providers that as a condition of receiving any amount of TennCare payment, the provider must comply with this Section of this Contract regarding fraud, abuse, waste and neglect.

The other terms and conditions of this contract not amended hereby shall remain in full force and effect.

IN WITNESS WHEREOF:

SCHALLER ANDERSON OF TENNESSEE, L.L.C.

By: Schaller Anderson, Incorporated, its Manager

**By: Jane Wilbershide
Chief Financial Officer**

Date

**DEPARTMENT OF FINANCE AND ADMINISTRATION
BUREAU OF TENNCARE:**

M. D. Goetz, Jr., Commissioner

Date

APPROVED:

DEPARTMENT OF FINANCE AND ADMINISTRATION:

M. D. Goetz, Jr., Commissioner

Date

COMPTROLLER OF THE TREASURY:

John G. Morgan, Comptroller of the Treasury

Date

CONTRACT SUMMARY SHEET

RFS Number:	318.65-124	Contract Number:	FA-03-15070-01
State Agency:	Department of Finance and Administration	Division:	Bureau of TennCare
Contractor		Contractor Identification Number	
Schaller Anderson, Inc.		<input checked="" type="checkbox"/> V- <input type="checkbox"/> C-	621846741 00

Service Description

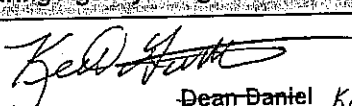
Provide Medical TennCare Enrollee Information/Appeals

Contract Begin Date	Contract End Date
September 15, 2002	September 14, 2007

Allotment Code	Cost Center	Object Code	Fund	Grant	Grant Code	Subgrant Code
318.65	111	134	11	X on STARS		

FY	State Funds	Federal Funds	Interdepartmental Funds	Other Funding	Total Contract Amount (including ALL amendments)
2003	\$1,377,453.25	\$4,132,359.75			\$5,509,813.00
2004	\$1,808,020.50	\$5,424,061.00			\$7,232,081.50
2005	\$1,877,321.50	\$5,631,964.50			\$7,509,286.00
2006	\$1,945,623.50	\$5,836,870.00			\$7,782,493.50
2007	\$2,024,161.75	\$6,072,484.75			\$8,096,646.50
2008	\$425,215.75	\$1,275,647.75			\$1,700,863.50
Total:	\$9,457,796.25	\$28,373,387.75			\$37,831,184.00

CFDA #	93.778	Check the box ONLY if the answer is YES:
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State Fiscal Contact		Is the Contractor a SUBRECIPIENT? (per OMB A-133)	
Name:	Dean Daniel	Is the Contractor a VENDOR? (per OMB A-133)	x
Address:	729 Church Street	Is the Fiscal Year Funding STRICTLY LIMITED?	
Phone:	Nashville, TN (615) 532-1362	Is the Contractor on STARS?	x
Procuring Agency Budget Officer Approval Signature		Is the Contractor's FORM W-9 ATTACHED?	
 Dean Daniel Keith Guithen		Is the Contractors Form W-9 Filled with Accounts?	x

COMPLETE FOR ALL AMENDMENTS (only)			Funding Certification	
	Base Contract & Prior Amendments	This Amendment ONLY	Pursuant to T.C.A., Section 9-6-113, I, M. D. Goetz, Jr., Commissioner of Finance and Administration, do hereby certify that there is a balance in the appropriation from which this obligation is required to be paid that is not otherwise encumbered to pay obligations previously incurred.	
END DATE →	09/14/07			
FY: 2003				
FY: 2004				
FY: 2005				
FY: 2006				
FY: 2007				
FY: 2008			<div style="border: 2px solid black; padding: 5px; transform: rotate(-15deg); display: inline-block;"> PROCESSED DEC 15 2003 DIRECTOR OF ACCOUNTS </div>	
TOTAL	\$37,831,184.00	0		

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Schaller Anderson, Inc.		<input checked="" type="checkbox"/> V- <input type="checkbox"/> C-	621846741 00

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CFDA #	93.778
State Fiscal Contact	
Name: Dean Daniel Address: 729 Church Street City: Nashville, TN Phone: (615) 532-1362	Check the box ONLY if the answer is YES Is the Contractor a SUBRECIPIENT? (per OMB A-133) <input type="checkbox"/> Is the Contractor a VENDOR? (per OMB A-133) <input checked="" type="checkbox"/> Is the Fiscal Year Funding STRICTLY LIMITED? <input type="checkbox"/> Is the Contractor on STARS? <input checked="" type="checkbox"/> Is the Contractor's FORM W-9 ATTACHED? <input type="checkbox"/> Is the Contractor's Form W-9 Filed with Accounts? <input checked="" type="checkbox"/>
Procuring Agency Budget Officer Approval Signature	
Dean Daniel	

COMPLETE FOR ALL AMENDMENTS (only)			Funding Certification	
	Base Contract & Prior Amendments	This Amendment ONLY	Pursuant to T.C.A., Section 9-6-113, I, C. Warren Neel, Commissioner of Finance and Administration, do hereby certify that there is a balance in the appropriation from which this obligation is required to be paid that is not otherwise encumbered to pay obligations previously incurred.	
END DATE →				
FY:				
FY:				
FY:				
FY:				
Total				

OCT 16 2002

DIRECTOR OF